

Before the  
**Federal Communications Commission**

Washington, D.C. 20554

In re Applications of	)	MM DOCKET NO. 93-107
	)	
DAVID A. RINGER	)	File No. BPH-911230MA
	)	
ASF BROADCASTING CORPORATION	)	File No. BPH-911230MB
	)	
WILBURN INDUSTRIES, INC.	)	File No. BPH-911230MC
	)	
SHELLEE F. DAVIS	)	File No. BPH-911231MA
	)	
OHIO RADIO ASSOCIATES, INC.	)	File No. BPH-911231MC
	)	
For a Construction Permit for	)	
a New FM Station on Channel	)	
280A at Westerville, Ohio	)	

To: The Review Board

**OPPOSITION AND/OR MOTION TO STRIKE PLEADING**

David A. Ringer, by and through counsel, hereby submits his Opposition and/or Motion To Strike the Supplement to Second Motion To Enlarge Issues Against Ringer" filed by Ohio Radio Associates, Inc.<sup>1</sup> ORA's Supplement is an unauthorized attempt to buttress a flawed portion of its Exceptions which are presently before the Review Board. The Supplement adds no information of decisional significance and should be denied and/or stricken. In support, whereof, the following is shown:

1. In its Supplement, ORA notes that Ringer's tower site has been sold to a new owner. Ringer has been proposing the tower site of the former WBBY-FM, owned by Mid-Ohio

<sup>1</sup> ORA also filed a "Response to Report" on April 12, 1994. This pleading merely provides ORA's comments on this matter and does not ask for any specific relief. Ringer shall address the issues raised by ORA in his forthcoming Petition For Leave To Amend.

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Communications, Inc. ORA cites to a recent letter from Carl Fry, Mid-Ohio's representative, to Mr. Ringer as proof that Ringer did not possess the necessary "reasonable assurance" for the use of his proposed site. This is simply just not the case.

2. As Ringer demonstrated in the proceeding below, and as the Presiding Judge agreed when he denied ORA's Motion To Enlarge Issues, Ringer has always had "reasonable assurance" of the use of his Westerville tower location. See, Memorandum Opinion and Order, 93M-393, released June 24, 1993 ("MO&O"). Ringer received not one but two separate letters from Mr. Fry re-stating Mid-Ohio's commitment to him. ORA now attempts to play a game of semantics by citing to certain phraseology contained in Mr. Fry's most recent letter. However, nothing has changed since the Presiding Judge rejected ORA's pleading as pointing to a different conclusion. See, MO&O at ¶3. Ringer did all that was required of an applicant - he contacted the site owner, received assurance that the site would be available to him, agreed to key terms of a site and equipment lease and later received two letters confirming the site owner's commitment. ORA apparently believes that Mr. Ringer was required to have a "binding commitment" from the site owner, which is clearly not Commission policy.

3. The fact that Ringer's site was recently sold is equally insignificant. Ringer's commitment from Mid-Ohio was non-binding and Mid-Ohio was free to sell or otherwise

dispose of its site without Ringer's consent. Mid-Ohio gave Ringer notice of the subsequent sale of the tower site and equipment and Ringer acted to obtain assurance from the new site owner for the continued use of the WBBY-FM tower site.<sup>2</sup> Therefore, Ringer has followed Commission policy to the letter.

**WHEREFORE**, the above-premises considered, David A. Ringer respectfully requests that the Supplement to Motion To Enlarge Issues Against Ringer filed by ORA be **DENIED** or **STRICKEN**.

Respectfully submitted,  
**DAVID A. RINGER**

By: 

Arthur V. Belendiuk  
Shaun A. Maher  
His Attorneys

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April 19, 1994

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<sup>2</sup> As noted in a "Petition For Leave To Amend" recently filed by Wilburn Industries, Inc., (another applicant that proposed the former WBBY-FM tower site), on April 8, 1994, John Shumate of Spirit Communications, Inc., the new owner of the site, informed Mr. Ringer's counsel (and apparently also the Wilburns) that he had changed his mind and that the site would no longer be available for a new FM station. Since that time, Ringer has been attempting to find a new tower location and an appropriate amendment will be filed to Mr. Ringer's application within the time frame allowed by the rules.

**CERTIFICATE OF SERVICE**

I, Lori Paige DiLullo, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 19th day of April, 1994, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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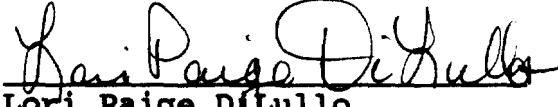
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